

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

In the Matter of the Application of Kansas )  
City Power & Light Company for Approval )  
of Its 2014 Energy Efficiency Rider for ) Docket No. 14-KCPE-442-TAR  
Program Costs Incurred January 1 Through )  
December 31, 2013 )

**RESPONSE OF KANSAS CITY POWER & LIGHT COMPANY  
TO CURB'S MOTION TO REMOVE CONFIDENTIAL DESIGNATIONS**

COMES NOW Kansas City Power & Light Company ("KCP&L" or "Company") and responds as follows to CURB's Motion to Remove Confidential Designations filed in this docket on May 23, 2014 ("CURB's Motion").

**I. BACKGROUND**

1. On March 31, 2014, KCP&L filed an Application with the Corporation Commission of the State of Kansas ("Commission") requesting approval of its 2014 Energy Efficiency Rider ("EE Rider") for the purpose of recovering expenditures for demand-side management ("DSM") programs from January 1, 2013 through December 31, 2013.

2. On April 2, 2014, the Citizens' Utility Ratepayers Board ("CURB") filed a Petition to Intervene, which was granted by the Commission on April 17, 2014.

3. On April 22, 2014, the Commission issued a Suspension Order, Protective Order and Discovery Order setting out the rules for conducting discovery and the treatment of confidential information.

4. On May 13, 2014, Commission Staff ("Staff") filed a Public and a Confidential version of its Report & Recommendation ("Staff's R&R"). In Staff's Public version, Staff redacted Exhibit TSR-1 that contained Company Non-Labor costs and Contractor Costs for three

of KCP&L's six DSM programs. KCP&L had provided these costs to Staff under Confidential seal. The information was requested by Staff via an informal email and KCP&L's response was in similar form.

5. On Monday, May 19<sup>th</sup> at 12:50 pm, counsel for CURB sent an email to KCP&L indicating confusion on how to deal with disagreements over the confidentiality of data supplied to Staff since there were no official data requests in the docket. CURB's counsel pointed out that similar data had been treated as public in KCP&L's EE Rider Applications in 2011, 2012 and 2013. He requested that KCP&L review the information and let him know why KCP&L believes the data is confidential and whether the Company would waive the designation.

6. On Wednesday, May 21<sup>st</sup> at 12:04 pm, counsel for CURB sent another email to KCP&L following-up on its previous inquiry. CURB's counsel indicated its particular concern was over why KCP&L was seeking confidentiality in this docket for types of data that in previous dockets were not considered confidential.

7. On May 21<sup>st</sup> at 3:13 pm, KCP&L's counsel responded to CURB's inquiry, explaining that the data in question had been classified as confidential in KCP&L's 2009 and 2010 Applications, but due to a mistake, back-up spreadsheets that contained this information had not been marked confidential by the Company in the 2011, 2012 and 2013 filings. CURB was informed that the information was confidential commercial information, as it involved contract terms and specifics, and other contract information that could be used by existing or future vendors to the disadvantage of KCP&L in future negotiations on such contracts. In addition, KCP&L's contracts with its existing vendors contain standard provisions that require KCP&L to keep terms confidential. Such contract information qualifies as "confidential

commercial information” under K.S.A 66-1220a, and is generally maintained as confidential by the Commission and parties in Commission proceedings.

## II. RESPONSE TO CURB

### A. *Kansas Law Does Not Support CURB’s Motion to Publicly Release the Information.*

8. The Kansas Open Records Act (“KORA”) and the Kansas Open Meetings Act (“KOMA”) state that it is the public policy of the state for public records and meetings to be open to the public, but both bodies of law acknowledge and provide for exceptions to that general policy.<sup>1</sup> Kansas law also recognizes that information submitted to the Commission in the course of its proceedings may properly be classified as confidential and not released to the general public.<sup>2</sup> In analyzing the issue of confidential information under K.S.A. 66-1220a, the Commission must first determine if the information at issue is, in fact, confidential. In this case, CURB does not appear to be arguing that the contract terms designated by KCP&L as “Confidential” are not confidential.<sup>3</sup> The information is properly classified as “Confidential”.

9. Under K.S.A. 66-1220a, the Commission is instructed not to disclose confidential commercial information unless the commission finds that disclosure is warranted after consideration of certain factors:

- (1) Whether disclosure will significantly aid the Commission in fulfilling its functions;
- (2) the harm or benefit which disclosure will cause to the public interest;
- (3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and

---

<sup>1</sup> K.S.A. 45-216 (KORA); K.S.A. 75-4317 and 75-4318 (KOMA).

<sup>2</sup> K.S.A. 66-1220a.

<sup>3</sup> CURB Motion, ¶14. CURB is arguing that Staff’s redactions in its R&R were too broad, as they encompassed not only the contract information KCP&L classified as “Confidential”, but also some information that did not fall under KCP&L’s designation.

- (4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

This analysis was not performed in CURB's Motion.

10. Public disclosure is not necessary for the Commission to fulfill its function of reviewing KCP&L's costs for reasonableness, and there is no harm to the public interest from limiting disclosure to only the parties in this docket. CURB and Staff have full access to the information and they represent the interests of ratepayers. KCP&L explained in its email response to CURB's inquiry that public disclosure of the contract terms between KCP&L and its vendors could negatively impact KCP&L in its future negotiations on these contracts. Such disadvantages flow through to KCP&L's customers since they ultimately are asked to pay the costs for the contracts KCP&L enters into for its DSM program administration. Releasing the data publicly could harm KCP&L, its customers and its vendors. The alternative adopted by the Commission in its Protective Order, which allows the parties access to the confidential information but does not allow general public disclosure, serves the public interest and protects KCP&L, its customers and its vendors.

11. The Commission has previously recognized the appropriateness of restricting proprietary vendor information from full dissemination, even approving the concept of limiting disclosure so that not all parties to a Commission proceeding are granted access. In Docket No. 08-GIMX-442-GIV ("442 Docket"), KCP&L asked the Commission to consider whether market-sensitive information should be limited from disclosure under a protective order so that it would not be available to KCP&L's vendors and competitors in the wholesale market. In

deciding the issue, the Commission conducted an analysis under K.S.A. 66-1220a and found that limiting disclosure to only some parties to the proceeding was warranted.<sup>4</sup>

12. Another instance where the Commission restricted dissemination of proprietary information in a Commission docket is *Farmland Industries, Inc. v. The State Corporation Commission of the State of Kansas*, 25 Kan.App.2d 849 (1999). In *Farmland*, the Commission had approved a rate design settlement that did not grant special contract customers a share of the revenue reduction resulting from the audit in the case. On appeal, Farmland argued that the Commission had violated Farmland's due process rights by allowing Westar to withhold from discovery an underlying software program used in preparing Westar's cost of service study because Westar's vendor had a proprietary interest in the computer program. The Commission had allowed Westar to protect the vendor's software program from disclosure and the Court of Appeals upheld the Commission's decision.

13. Kansas law and a full analysis under K.S.A. 66-1220a of the confidential designation in this case of vendor contract information supports upholding KCP&L's designation and allowing CURB access pursuant to the provisions established by the Protective Order in this docket.

*B. CURB's Inconvenience Is Not a Basis to Reject a Confidential Classification for Confidential Commercial Information.*

14. CURB asserts that "KCPL and most other utilities regularly violate the requirement to provide a written statement of the specific grounds for the confidential designation at the time the designation is made."<sup>5</sup> KCP&L disagrees. While strict formality may

---

<sup>4</sup> Order on Petition for Reconsideration of Kansas City Power & Light Company issued June 1, 2009 ("442 Order"), at ¶¶ 38 & 44 (emphasis added).

<sup>5</sup> CURB Motion, ¶10.

not always be followed in this regard, especially in situations like the present one where confidential information was provided in response to an informal email request and not a formal data request, KCP&L attempts to comply with the requirements of the Commission's statute, regulations and orders regarding confidential information. Normally KCP&L includes with its formal confidential submissions a Confidential Designation Cover Sheet similar to the one attached hereto as **Exhibit A**. When KCP&L's response to a formal data request contains confidential information, the response also normally sets forth the reason for the confidential designation. A copy of a confidential data request response is attached as **Exhibit B**.

15. CURB indicates that it did not discover there was any confidential information provided by KCP&L in this case until Staff filed its R&R because Staff obtained information from KCP&L via email rather than formal data requests. CURB then sets out a bullet point outline intended to show the timing difficulties experienced by CURB when confidential information is involved in a docket.<sup>6</sup> First, KCP&L points out that CURB's ten-day timeline in its outline assumes that Staff's filing of its R&R triggers CURB's ability to engage in discovery. To the contrary, CURB was able to begin discovery on KCP&L's Application as soon as the Discovery Order was issued on April 22, 2014. Second, handling confidential information in any case always adds a layer of inconvenience to the proceeding. That is to be expected. However, inconvenience is not an element the legislature set out for consideration under K.S.A. 66-1220a. CURB asserts that filing a redacted version of documents "hampers our ability to make our arguments ...", but fails to explain how this is the case.<sup>7</sup> CURB is free to make all the same arguments using confidential data that it could make if the data were not confidential.

---

<sup>6</sup> CURB Motion, ¶s 12 and 13.

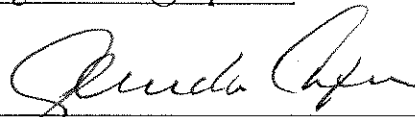
<sup>7</sup> CURB Motion, ¶13.

### III. CONCLUSION

16. In summary, Kansas law recognizes the need for certain sensitive commercial information to be kept confidential even when it is part of a Commission proceeding. The information designated by KCP&L in this case as confidential clearly meets the definition of confidential commercial information. The terms of the Commission's Protective Order properly balance the public interest with the interests of the Company. CURB is requesting the Commission order public disclosure of confidential information to the detriment of KCP&L, its customers and its vendors. CURB's Motion should be denied.

Respectfully submitted,

Roger W. Steiner (KS #26159)  
Kansas City Power & Light Company  
1200 Main Street, 16th Floor  
Kansas City, MO 64105  
Telephone: (816) 556-2314  
Facsimile: (816) 556-2787  
[Roger.Steiner@kcpl.com](mailto:Roger.Steiner@kcpl.com)



---

Glenda Cafer (KS #13342)  
(785) 271-9991  
Terri Pemberton (KS #23297)  
(785) 232-2123  
CAFER PEMBERTON LLC  
3321 SW 6<sup>th</sup> Avenue  
Topeka, Kansas 66606  
(785) 233-3040 (fax)  
[glenda@caferlaw.com](mailto:glenda@caferlaw.com)  
[terri@caferlaw.com](mailto:terri@caferlaw.com)

**COUNSEL FOR KANSAS CITY POWER &  
LIGHT COMPANY**

Kansas City Power & Light Company

Docket No.:

Date:

**CONFIDENTIAL  
INFORMATION**

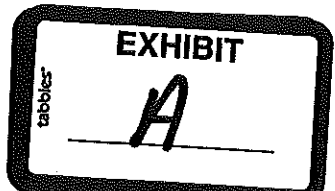
---

The following information is provided to the Kansas Corporation Commission under  
CONFIDENTIAL SEAL:

Page	Reason for Confidentiality from List Below

Rationale for the "confidential" designation is documented below:

- "1" Confidential financial information/ budget projections.
- "2" Contract terms or specifics, or contract information that could be used by existing or future vendors to the disadvantage of KCP&L.
- "3" Sensitive information that could impact pending or threatened litigation.
- "4" Advice of counsel or other paid experts, advisors or consultants.





“5” Trade Secret or Commercially Sensitive.

“6” Other (specify) \_\_\_\_\_.

Should any party challenge KCP&L’s assertion of confidentiality with respect to the above information, KCP&L reserves the right to supplement the rationale contained herein with additional factual or legal information.

Company Name: KCPL KS  
Case Description: Energy Efficiency Rider  
Case: 14-KCPE-442-TAR

Response to Smith Della Interrogatories -- Set CURB\_20140501  
Date of Response:

Question No. :CURB-2

Please provide a copy of all information distributed to parties in this proceeding during meetings, via emails, or other forms of informal discovery requests.

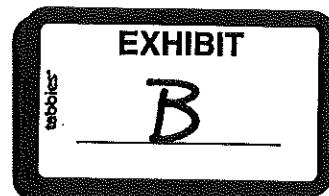
RESPONSE: (do not edit or delete this line or anything above this)

Attached are the emails and support documents provided to Staff relating to the 2014 Energy Efficiency Rider filing.

The information attached to this response is considered **CONFIDENTIAL** as it contains marketing analyses or other market specific information related to goods and services offered in competition with others.

**Attachments:**

QCURB-2\_CONF\_Emails.pdf  
QCURB-2\_CONF\_KS EE Rider Workpaper-3\_2014.xls  
QCURB-2\_CONF\_EER Filing Invoice Backup.pdf  
QCURB-2\_Kansas EER Amortization Schedule.xls  
QCURB-2\_Verification.pdf



CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 30<sup>th</sup> day of May, 2014, a true and correct copy of the above and foregoing *Response of Kansas City Power & Light Company to CURB's Motion to Remove Confidential Designations* was electronically served, hand-delivered or mailed, postage prepaid, to the below-named individuals.

DAVID SPRINGE  
NIKI CHRISTOPHER  
DELLA SMITH  
SHONDA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604

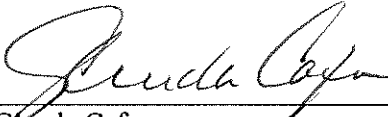
ANDREW FRENCH, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

JAY VAN BLARICUM, ADVISORY COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

ROGER W. STEINER, CORPORATE COUNSEL  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PL, 1200 MAIN ST (64105)  
PO BOX 418679  
KANSAS CITY, MO 64141-9679

MARY TURNER, DIRECTOR, REGULATORY AFFAIRS  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PL, 1200 MAIN ST (64105)  
PO BOX 418679  
KANSAS CITY, MO 64141-9679

NICOLE A. WEHRY, SENIOR PARALEGAL  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PL, 1200 MAIN ST (64105)  
PO BOX 418679  
KANSAS CITY, MO 64141-9679

  
\_\_\_\_\_  
Glenda Cafer